IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5660 of 1999

with

SPECIAL CIVIL APPLICATION No 8389 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ELECTRICAL RESEARCH AND DEVELOPMENT ASSOCIATION

Versus

RS THAKKUR

Appearance:

1. Special Civil Application No. 5660 of 1999

MR BS PATEL for Petitioner No. 1

MR MAYANK DESAI for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19/12/2001

C.A.V. JUDGEMENT

1. Electrical Research and Development Association,

petitioner has filed this petition challenging the judgment and award passed by the Labour Court, Vadodara, in Reference (LCV) No.618 of 1984 dated 6.5.1999 reinstating Shri R.S.Thakur in the service of petitioner association as driver with 60% back wages and the cost of Rs.2000/-.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner association was established at Vadodara in the year 1974 and registered under the Shops and Establishment Act. The activities of the petitioner association are of research work. As per the contention of the petitioner in the year 1983 one Mr.R.H.Buch was the Director in the petitioner association was in need of a driver and the respondent had been appointed by Mr.Buch as his personal driver at the salary of Rs.500/- p.m. The salary of the respondent was not paid by the petitioner association but it was paid by Mr.Buch from his personal income.

2.2 The respondent approached the Labour Commissioner, Vadodara by making grievances that he was appointed as driver at the salary of Rs.500/- p.m. by the petitioner association and he had served the association as a driver from 1.5.1983 to 30.11.1983 and on that day he was discharged from service. When he was serving with the association he was giving the following receipts which reads as follows:

> "Received from Shri R.H.Buch, Director ERDA a sum of Rs.500/- (Rupees five hundred only) for the services done during the month of November, 1983."

2.3 As the respondent services were terminated from November 1983 the respondent through their union Bharatiya Mazdoor Sangh addressed a letter dated 18.2.84 to the petitioner association that he was employed by association and without any mistake on his part or without any notice his services have been terminated from November 1983. The petitioner association by reply dated 7.3.84 stated that as there was vacancy for casual driver the respondent was working for two months as temporary driver and he has worked only for temporary period.

2.4 As the respondent could not be reinstated in service and therefore a reference was made before the Labour Court Vadodara being Reference LCV No.618 of 1984. In the said reference the respondent filed a statement of

claim and reiterated the contentions which I have noted in this behalf and stated that his order of discharge is illegal and he should be reinstated in service. The said proceedings filed on 19.9.84. In the said proceedings the association filed a written statement and denied the contention. It was denied that the respondent was employed with the association and there was no relation of employer and employee between association and respondent and the industrial disputes act is not applied and the same is not covered under the I.D.Act. The said written statement filed by the association on 19.1.1985.

2.5 The Labour Court by its impugned judgment and award dated 6.5.99 after taking into oral and documentary evidence on record arrived at the conclusion that the respondent was driven the car of association for which respondent has produced the signatures of various officers and various car numbers and also catalogue of the association and he has also referred two earlier letters and came to the conclusion that respondent was driver of the association and his dismissal was illegal and he should be reinstated in service with 60% of back salary.

3. It may be noted that against the said award the petitioner-association filed Special Civil Application No.5660 of 1999 whereas the respondent employee had also filed Special Civil Application No.8389 of 1999 against the same award so far it was against the respondent workman.

4. Before me on behalf of the association Mr.B.S.Patel, learned advocate has raised various contentions. It was submitted that the respondent was not a driver of the association. There was no regular appointment and there was no interview and there was no relationship exists of employer and employee between petitioner and respondent. He further submitted that the Industrial Disputes Act does not apply to the association. He further submitted that in any view of the matter the respondent has not completed 240 days and therefore the award passed by the tribunal is illegal and liable to be quashed and set aside.

5. On the other hand, Mr.Desai, learned advocate for the respondent workman has stated that if the respondent happens to be a personal driver of the director of the association then he would driven the car only of the director personally but in this case the respondent has almost driven all the cars of the association and log book also produced by the respondent to show that he has

driven all cars of association so he was working with the association. He further submitted that when respondent workman addressed a letter dated 18.2.84 to the petitioner association in that case the petitioner-association replied to the workman on 7.3.84 but did not state that respondent was not employee of the association. To that extent the whole say of the petitioner that respondent was not driver of the association but personal driver of the director only is absolutely an after thought and with a view to evade the liability of the petitioner association in this behalf. However the said contention is contrary to the record of the case.

5.1 He further submitted that though petitioner is research institute but if ATIRA happens to be an industry for which I.D.Act apply, so naturally the I.D.Act does apply to the petitioner-institution also in this behalf. (Re. ATIRA Vs. State of Bombay 1960(2) LJ 720. He further submitted that the respondent has served from 1.5.83 to 30.11.83 and during that period if Saturdays and Sundays are counted then the respondent-workman has completed 240 days. He has further submitted that even respondent also says that he has received salary from Mr.Buch in capacity as a director and not in an individual capacity and therefore in any view of the matter he was a driver of the association.

6. Mr.B.S.Patel, learned advocate for the petitioner-association has invited my attention to the necessary record of the case and also invited my attention to the written statement.

7. On the other hand Mr.Desai has invited my attention to the letters dated 18.2.84, 7.3.84 and log sheet of the association wherein the signatures of the respondent workman was taken, the receipts issued by respondent in this behalf and the statement of claim made by respondent in this behalf.

8. I have gone through the entire evidence on record. In my view the contention of the petitioner association that respondent was driver of the director in his personal capacity but not the association is wholly incorrect and is clearly an after thought. In my view the receipts given by the respondent shows that he has received salary from Mr.Buch in capacity as a director and not in his individual capacity. He has invited my attention to the muster roll of the association which has been signed by respondent. In my view as the respondent was happened to be driver of the association, he has

signed the muster roll of the association, the signature put by him on the muster roll is a clintching fact by which respondent can be considered as a driver of the association. Moreover when the respondent addressed a letter dated 18.2.84 claiming that he was a driver of the association in the reply dated 7.3.84 the petitioner has not denied that fact though only stated that respondent was a casual worker and therefore that contention of the petitioner also not required to be accepted in this case.

9. I have gone through the award of the case. I do not find any infirmity of the award and the Labour Court has given very cogent and convincing reasons and therefore the award passed by the Labour Court is required to be accepted.

10. As regards contention of Mr.Desai in Special Civil Application No.8389/99 is concerned where he has challenged the award so far as the tribunal has given 60% salary, in my view, the Labour Court has given very cogent and convincing reasons and therefore I do not intend to interfere with the said award. However the petitioner is directed to reinstate the respondent workman in service with 60% back salary in this behalf as given by the Labour Court.

11. To that extent I dismissed both the petitions, petition filed by the association and the respondent-workman in this behalf. Rule is discharged in the aforesaid terms. No order as to costs.

(K.M. Mehta, J.)

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